Frequently Asked Questions

Q. "Can you provide an example of how compensatory mitigation could be applied to oil and gas operations?"

Response: A small oil and gas field has been operating for 20+ years without much change. However, over the next 10 years it is expected to expand several times its current size with many more wells, roads, and related infrastructure and with an increase in vehicular use (both public and private). Major residual impacts to crucial wildlife winter range are expected to remain even after best management practices are implemented.

Some compensatory mitigation options could include any combination of the following:

- A mitigation fund could be established in which all operators contribute. This fund could be held by the BLM or another party to be later used for specific on-the-ground mitigation projects. The projects could take several forms and include, for example, habitat enhancement in the same or general area. These projects could be located on public, private or State lands. (Note: This would require prior State Director approval before implementation.)
- Operators could choose to develop and implement offsite projects on their own, after BLM has determined that they in fact accomplish the needed mitigation.
- Critical habitats could be purchased and managed for the species of concern. These purchases could be made directly by the operators or by BLM using a mitigation fund.

Q. "How could compensatory mitigation apply to a wind energy right-of-way project on public lands?"

Response: A wind energy project is proposed on public lands that involves numerous wind turbines in excess of 200 feet in height along an exposed ridgeline, with access roads, electric transmission lines, and support facilities. Residual impacts to wildlife habitat from surface disturbance related to the facilities and visual resource impacts from the wind turbines are expected to remain even after best management practices are implemented.

Some compensatory mitigation options could include any combination of the following:

- The right-of-way holder could develop and implement offsite wildlife habitat improvement projects with the approval of BLM.
- Critical habitats or conservation easements could be purchased and managed for wildlife species of concern. These purchases could be made directly by the right-of-way holder or by BLM using contributed funds.
- The right-of-way holder could pursue rehabilitation, reclamation, or removal of existing disturbances or visual intrusions in the landscape setting to reduce the overall cumulative visual resource impacts in the area. This could involve the reclamation of existing unnecessary roads in the area, removal of abandoned buildings or other structures, cleanup of illegal dumps or trash, or the rehabilitation of existing erosion or disturbed areas.

- A mitigation fund could be established by the right-of-way holder for use by the BLM or the State game and fish department for on-the-ground wildlife habitat improvement projects in the general area. These projects could be located on public, private, or State lands. A formal cooperative agreement is required between the parties and must be approved by the State Director.

Q. "If an applicant submits a permit or right-of-way application, can he or she offer to pay a "damages" fee, and then proceed with the project as planned?"

Response: The short answer is "no." The BLM will not accept direct cash payment as a replacement of on-the-ground mitigation of impacts. However, Departmental policy does allow for collection of funds where those funds are used to improve, restore, or replace like habitats as part of a formal, structured agreement to implement a mitigation strategy determined effective in a NEPA document. The BLM has mandatory fiduciary requirements for the collection and use of such received funding (see Manual Handbook 1511-1).

Q. "As follow up to the above question, can the BLM accept an applicant's voluntarily proposed damage payments rather than do on-the-ground mitigation as is sometimes done on private lands?"

Response: No. The BLM always requires onsite mitigation of impacts using best management practices to the extent practicable. Cash payments to avoid onsite mitigation are not to be accepted and are not in accordance with Departmental or Bureau policy. However, in-lieu fee payments into a fund for mitigation projects can be an approved mechanism of compensatory mitigation. This would require a series of prior steps to be approved. As a minimum, the impact mitigation would have to be analyzed in a NEPA document; a cooperative agreement would have to be established between the BLM and affected parties; and a clear procedure developed for the use of such funds for on-the-ground development of compensatory mitigation projects directly related to cumulative or individual project impacts.

Q. "Does this compensatory mitigation policy apply to range projects developed by the BLM and funded by the 8100 accounts?"

Response: No. Range projects and other Bureau programs are not subject to this compensatory mitigation policy IM.

Q. "Does this policy apply to special recreation permits or other authorizations not related to oil and gas, geothermal, or energy rights-of-way?"

Response: No. At the current time, this policy only applies to oil, gas, or geothermal authorizations or energy rights-of-way. Expansion of the policy to other programs may be considered in the future.

Q. "How does the compensatory mitigation policy apply to impacts to cultural sites?"

Response: Consultation with the State Historic Preservation Officer and/or the Advisory Council on Historic Preservation guides any possible use of compensatory mitigation. Those consultation efforts will determine if and when compensatory mitigation is to be considered.

Q. "Does the BLM anticipate this new policy will result in a structured policy similar to the wetlands banking process?'

Response: No.

Q. "How does this policy IM apply to replacement habitat off site?"

Response: When selecting lands or resources as replacement or substitute, the lands must be located so as to protect, restore, or enhance the impacted resources. To protect any investments made as a compensatory mitigation measure, the land ownership (including lease rights) must be generally sufficient for the term of the impact and free from encumbering prior rights. It is very important that lands selected not become encumbered by a compensatory mitigation measure that would preclude or substantially affect existing rights. When compensatory mitigation occurs on non-Federal land, there must be a legally enforceable method to assure that mitigation measures would remain in place and that mitigation measure effectiveness would not be compromised until the mitigation objectives are reached. This latter point may require binding agreements with the parties involved to avoid loss of impact mitigation.

Q. "How does compensatory mitigation apply to Visual Resource Management (VRM)?"

Response: Compensatory mitigation can be considered when it is not possible to design or mitigate a project sufficiently to meet VRM classes. This could take the form of actual rehabilitation of existing disturbance or development where such remedial actions would reduce the overall cumulative impacts to the visual resources of a particular setting.

Q. "Does off-site mitigation affect the unnecessary and undue degradation provision of FLPMA?"

Response: While the offsite mitigation proposal may be used for NEPA analysis, BLM still has an obligation to ensure that an approved action does not result in unnecessary or undue degradation of public land resources.

Q. "Does compensatory mitigation include direct payments or compensation to the livestock permittee for loss of grazing uses on a grazing permit?"

Response: No. The BLM and Federal courts have consistently held that livestock grazing is a privilege and not a right. When a grazing permit or lease is reduced for whatever reason, no monetary compensation is provided by the BLM or any other BLM permittee. The only time compensation is referenced at 43 CFR 4120.3-6(c), which states in part:

"Whenever a grazing permit or lease is cancelled…the permittee or lessee shall receive from the United States reasonable compensation for the adjusted value of their interest in authorized permanent improvements placed or constructed by the permittee or lessee on the public lands covered by the cancelled permit or lease. The adjusted value is to be determined by the authorized officer. Compensation shall not exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein."